



PATENT
ATTORNEY DOCKET NUMBER: 50125/008001

X
JAD

Certificate of Mailing: Date of Deposit: March 22, 2002

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Assistant Commissioner of Patents, Washington, D.C. 20231.

Colleen Coyne
Printed name of person mailing correspondence

Colleen Coyne
Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Marion Elke Hofmann et al.	Art Unit:	1653
Serial No.:	09/445,362	Examiner:	Carlson, K.
Filed:	May 15, 2000	Customer No.:	21559
Title:	MYOCARDIUM-AND SKELETAL MUSCLE-SPECIFIC NUCLEIC ACID, ITS PREPARATION AND USE		

Assistant Commissioner for Patents
Washington, D.C. 20231

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 C.F.R. § 1.8(b) and 1.181, Applicant hereby petitions to withdraw the Notice of Abandonment mailed March 5, 2002 (copy enclosed), and received March 11, 2002. According to the Notice, the application was abandoned under 37 C.F.R. § 1.135 because the sequence diskette submitted in response to the Notice to Comply with Sequence Requirements mailed August 1, 2001 was damaged. However, as explained below, a complete reply, including a usable sequence diskette, was timely filed on October 16, 2001.

The undersigned, Applicant's attorney of record, first became aware of the abandonment on March 11, 2002, upon receipt of the Notice of Abandonment, and

submits that this Petition to Withdraw the Notice is being promptly submitted as required by 37 C.F.R. § 1.8(b)(1).

The following documents are submitted under 37 C.F.R. § 1.8(b)(2) as proof that a complete reply was timely filed on October 16, 2001:

1. A copy of the reply, including an executed certificate of mailing signed by Colleen Coyne on October 16, 2001.
2. A copy of the Petition for Extension of Time, including an executed certificate of mailing signed by Colleen Coyne on October 16, 2001, which extended the period for replying to the Notice to Comply with Sequence Requirements for two months, to and including November 1, 2001;
3. A copy of the postcard dated October 16, 2001 that was included with the reply and Petition for Extension.
4. A copy of the postcard stamped received by the PTO Mailroom on January 9, 2002.

Also enclosed are original signed declarations under 37 C.F.R. § 1.8(b)(3) by:

1. Colleen Coyne, attesting on the basis of personal knowledge that the above documents were timely filed on October 16, 2001.
2. Guy Beardsley, attesting on the basis of personal knowledge to the mail procedures in effect on October 16, 2001, and to the fact that a usable sequence diskette was included in Applicant's reply of October 16, 2001.
3. Karen L. Elbing, Ph.D., attesting on the basis of personal knowledge that the above documents and usable sequence diskette were timely filed on October 16, 2001.

Applicant submits that the reply, including a usable sequence diskette, was timely filed and requests that the Notice of Abandonment be withdrawn. Applicant notes that this diskette problem occurred during the time when PTO correspondence was being

irradiated, and Applicant submits that damage to the diskette was much more likely to have occurred during this PTO mail processing procedure, as Applicant's attorney does not routinely have sequence diskette damage problems.

Moreover, even if the diskette was damaged upon mailing (which Applicant does not believe), Applicant should have been able to correct this problem by simply submitting a new disk and petitioning for an additional extension of time for reply. Unfortunately, due to mail receipt delays at the PTO, Applicant was not notified of the problem until after the time for reply had expired. Applicant notes that the Reply to the Notice to Comply was filed on October 16, 2001 (well within the period for extended reply), was not processed by the PTO until 3 months later, on January 9, 2002, and the sequence diskette problem was not discovered by the PTO for an additional 2 months, on March 5, 2002. Due to these delays in mail handling at the PTO, the period for Reply to the Notice had by that time elapsed, and Applicant was unable to correct this sequence diskette problem.

Furthermore, Applicants submits that their reply filed on October 16, 2001 was at the very least a *bona fide* attempt to reply and, on this basis alone, should satisfy the requirements of 37 C.F.R. § 1.135(c), allowing Applicant to supply at a later time any document (or, in this case, diskette) needed to complete a submission.

In short, Applicant believes that damage to the sequence diskette occurred at the PTO due to the off-site shipping and irradiation of mail. Furthermore, due to the delays resulting from this mail process, Applicant was not notified of the sequence diskette

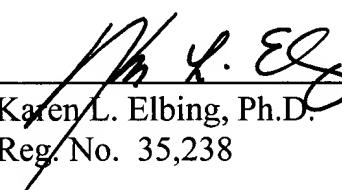
problem until after the period for reply had elapsed. Moreover, Applicant's reply was *bona fide* and should not have resulted in abandonment of the application. Under these circumstances, Applicant believes that abandonment of this case should be withdrawn.

To complete Applicant's reply, a new sequence diskette, identical to that filed on October 16, 2001, is submitted herewith.

If there are any charges, or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: 22 March 2002


Karen L. Elbing, Ph.D.
Reg. No. 35,238

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045

\Clark-w2k1\documents\50125\50125.008001 Petition to Withdraw Notice of Abandonment.wpd



**NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING
NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES**

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to these regulations, published at 1114 OG 29, May 15, 1990 and at 55 FR 18230, May 1, 1990.
- 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."
- 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- 6. The paper copy of the "Sequence Listing" is not the same as the computer readable from of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- 7. Other: the specification and the claims do not have sequence identification numbers at each sequence as required by 37 CFR 1,821(d).

Applicant Must Provide:

- An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.
- A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216

For CRF Submission Help, call (703) 308-4212

For PatentIn software help, call (703) 308-6856

PLEASE RETURN A COPY OF THIS NOTICE WITH YOUR RESPONSE